



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200948065

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SEP - 2 2009

UIL: 408.00-00
408A

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XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

T:EP:RAT:3

Legend:

Taxpayer A: XXXXXXXXXXXXXXXXXXXXXXXX

Taxpayer B: XXXXXXXXXXXXXXXXXXXXXXXX

Financial Planner C: XXXXXXXXXXXXXXXXXXXXXXXX

IRA X: XXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

IRA Y: XXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Roth IRA X: XXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Roth IRA Y: XXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Company D: XXXXXXXXXXXXXXXXXXXXXXXX

Month E: XXXXXXXXXXXXXXXX

Amount L: XXXXXXXXXXXXXXXX

Amount M: XXXXXXXXXXXXXXXX

200948065

Dear xxxxxxxxxxxx:

In a letter dated June 16, 2009, you requested a ruling in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations ("Regulations"). The following facts and representations support your ruling request.

Taxpayer A is married to Taxpayer B. Taxpayers A and B, respectively, maintained IRA X and IRA Y, traditional individual retirement arrangements ("IRA") described in section 408(a) of the Internal Revenue Code (the "Code"), with Company D. During Month E, 2007, pursuant to the advice of their Financial Planner C, Taxpayers A and B converted IRA X and IRA Y, in the amounts of Amount L and Amount M, respectively, to Roth IRA X and Roth IRA Y, respectively, also with Company D. Taxpayers A and B's adjusted gross income ("AGI") for _____ exceeded the limit found at section 408A(c)(3)(B) of the Code. However, prior to the IRA "conversions", Taxpayers A and B were not advised by their Financial Planner C, that they were ineligible to convert IRA X and IRA Y to Roth IRAs. Additionally, Taxpayers A and B were unaware of the time limits and or deadlines for recharacterizing amounts that had been improperly converted from traditional IRAs to Roth IRAs.

Taxpayers A and B timely filed their calendar year joint _____ Federal Income Tax Return, Form 1040.

Based on the above information you request the following letter ruling:

That, pursuant to section 301.9100-3 of the Regulations, Taxpayers A and B are granted a period not to exceed six months from the date of this ruling letter to recharacterize their Roth IRA X and Roth IRA Y, respectively, to traditional IRAs.

With respect to your request for relief under section 301.9100-3 of the Regulations, section 408A (d)(6) of the Code and section 1.408A-5 of the Income Tax Regulations provide that, except as otherwise provided by the Secretary, a taxpayer may elect to recharacterize an IRA contribution made to one type of IRA as having been made to another type of IRA by making a trustee-to trustee transfer of the IRA contribution, plus earnings, to the other type of IRA. In a recharacterization, the IRA contribution is treated as having been made to the transferee IRA and not to the transferor IRA. Under Code section 408A(d)(6) and section 1.408A-5 of the Regulations, this recharacterization election generally must occur on or before the date prescribed by law including extensions, for filing the taxpayer's federal income tax returns for the year of contributions.

Section 1.408A-5, Question and Answer-6 of the regulations, describes how a taxpayer makes the election to recharacterize the IRA contributions. To recharacterize an amount that has been converted from a traditional IRA to a Roth IRA: (1) the taxpayer must notify the Roth IRA trustee of the taxpayer's intent to recharacterize the amount, (2) the taxpayer must provide the trustee (and the transferee trustee, if different from the

transferor trustee) with specified information that is sufficient to effect the recharacterization, and (3) the trustee must make the transfer.

Section 408A(c)(3)(B) of the Code and section 1.408A-4, Q&A-2 of the Regulations, provide, in summary, that an individual with modified adjusted gross income in excess of \$100,000 for a taxable year is not permitted to convert an amount to a Roth IRA during that taxable year. Section 1.408A-4, Q&A-2, further provides, in summary, that an individual and his spouse must file a joint Federal Tax Return to convert a traditional IRA to a Roth IRA, and that the modified adjusted gross income subject to the \$100,000 limit for taxable year is the modified AGI derived from the joint return using the couple's combined income.

Sections 301.9100-1, 301.9100-2, and 301.9100-3 of the Procedure and Administration Regulations, in general, provide guidance concerning request for relief submitted to the Service on or after December 31, 1997. Section 301.9100-1(c) of the regulations provides that the Commissioner of the Internal Revenue Service, in his discretion, may grant a reasonable extension of the time fixed by a regulation, a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin for the making of an election or application for relief in respect of tax under, among others, Subtitle A of the Code.

Section 301.9100-2 lists certain elections for which automatic extensions of time to file are granted. Section 301.9100-3 of the regulations generally provides guidance with respect to the granting of relief with respect to the elections not referenced in section 301.9100-2. The relief requested in this case is not referenced in section 301.9100-2.

Section 301.9100-3 of the regulations provides that applications for relief that fall within section 301.9100-3 will be granted when the taxpayer provides sufficient evidence (including affidavits described in section 301.9100-3(e)(2)) to establish that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief would not prejudice the interests of the government.

Section 301.9100-3(b)(1) of the temporary regulations provides that a taxpayer will be deemed to have acted reasonably and in good faith (i) if its request for section 301.9100-1 relief is filed before the failure to make a timely election is discovered by the Service; (ii) if the taxpayer inadvertently failed to make the election because of intervening events beyond the taxpayer's control; (iii) if the taxpayer failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) the taxpayer reasonably relied upon the written advice of the Service; (v) the taxpayer reasonably relied on a qualified tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make the election.

Section 301.9100-3(c)(1)(ii) of the temporary regulations provides that ordinarily the interests of the government will be treated as prejudiced and that ordinarily the Service will not grant relief when tax year that would have been affected by the election had it

been timely made are closed by the statute of limitations before the taxpayer's receipt of a ruling granting relief under this section.

In this case, Taxpayers A and B were ineligible to convert IRA X and IRA Y to Roth IRA X and Roth IRA Y since their adjusted gross income exceeded \$100,000. However, Taxpayers A and B believed that they were eligible to convert their IRAs to Roth IRAs until they discovered otherwise at which time the deadlines for recharacterizing their Roth IRAs as traditional IRAs had passed. Taxpayers A and B filed this request for section 301.9100 relief shortly after discovering that they were ineligible to convert IRA X and IRA Y to Roth IRAs. Calendar year 2007 is not a "closed" tax year, and the statute of limitations with respect thereto has not "run".

With respect to your request for relief, we believe that, based on the information submitted and the representations made, the requirements of section 301.9100-1 and 301.9100-3 of the Regulations been met, and that you have acted reasonably and in good faith with respect to making the election to recharacterize your Roth IRAs as traditional IRAs. Specifically, the Service has concluded that you have met the requirement of clause (v) of section 301.9100-3(b)(1) of the regulations. Therefore, you are granted an extension of 60 days from the date of the issuance of this letter ruling to so recharacterize.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section or either the Code or regulation which may be applicable thereto.

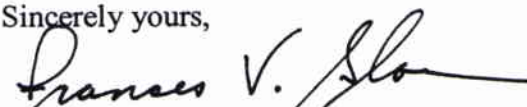
This letter assumes that the above-referenced IRAs qualify under Code section 408 at all relevant times.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative.

If you have any questions regarding this ruling, please contact xxxxxxxxxx, at xxxxxxxxxx or by fax at xxxxxxxxxx.

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

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